

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 22 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

SHIRLEY PINCZEWSKI-FISHER,)	2 CA-CV 2011-0101
)	DEPARTMENT B
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
KATHLEEN CONNELLY, JAN MASON,)	Appellate Procedure
Clerks for the City of Apache Junction;)	
THE CITY OF APACHE JUNCTION,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201101537

Honorable Joseph R. Georgini, Judge

AFFIRMED

Shirley Pinczewski-Fisher

Apache Junction
In Propria Persona

Holloway Odegard Forrest & Kelly, P.C.
By Rae Richardson

Phoenix
Attorneys for Defendants/Appellees

K E L L Y, Judge.

¶1 Appellant Shirley Pinczewski-Fisher¹ appeals from the trial court’s ruling granting summary judgment in favor of appellees Kathleen Connelly, Janet Mason, and the City of Apache Junction (collectively “the city”). On appeal, she argues the court erred on numerous grounds, including its ruling that her application for a writ of mandamus was untimely. Because the court correctly determined she did not file within the required time, we affirm.

Background

¶2 We view the facts in the light most favorable to the party against whom summary judgment was entered, drawing all justifiable inferences in its favor. *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶ 2, 212 P.3d 853, 855 (App. 2009). Pinczewski-Fisher submitted petitions in support of a referendum to the city clerk of Apache Junction. The clerk’s office rejected the petitions for failure to meet the filing requirements. Pinczewski-Fisher then challenged the clerk’s rejection of the petitions by applying for a writ of mandamus in the trial court, pursuant to A.R.S. § 19-122. The court sua sponte dismissed the application as untimely. Pinczewski-Fisher filed a motion for reconsideration, and the city moved for summary judgment. Following a hearing, the

¹Although the captions on the notice of appeal and opening brief list additional appellants, both documents are signed only by Pinczewski-Fisher. Because Pinczewski-Fisher is not an attorney, she may not represent the other parties on appeal. *See State v. 1810 East Second Ave.*, 193 Ariz. 1, 2 n.1, 969 P.2d 166, 167 n.1 (App. 1997). We therefore address the appeal only as it relates to Pinczewski-Fisher. *See id.*

court concluded the application was barred on several grounds, including timeliness, and granted summary judgment in favor of the city.² This appeal followed.

Discussion

¶3 As a preliminary matter, even though Pinczewski-Fisher is proceeding in propria persona, she is held to the same standards as a “qualified member of the bar,” and “is entitled to no more consideration than if [s]he had been represented by counsel.” *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). Pinczewski-Fisher’s brief does not comply with Rule 13(a), Ariz. R. Civ. App. P.; it is largely unsupported by argument, authority, or citation to the record.³ Also, she did not include the transcripts of any trial court proceedings in the record on appeal. As the appellant, she was required to “mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised.” *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* Ariz. R. Civ. App. P. 11(b)(1). In the absence of a transcript, we must presume the record supports the court’s ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005).

²The trial court also granted summary judgment on the basis that Pinczewski-Fisher lacked standing to apply for a writ of mandamus. But, even assuming arguendo that she had standing, the grant of summary judgment was proper, as discussed below, because her application was not timely.

³Although an appeal may be dismissed when it fails to comply with minimum standards, *see Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), in our discretion we address her arguments to the extent we are able.

¶4 Pinczewski-Fisher argues the trial court erred by granting summary judgment on the basis that she had not timely applied for a writ of mandamus. We review de novo a grant of summary judgment. *Valder Law Offices v. Keenan Law Firm*, 212 Ariz. 244, ¶ 14, 129 P.3d 966, 971 (App. 2006). Section 19-122(A) provides in relevant part, “[w]ithin five calendar days after the refusal [to process referendum petitions,] any citizen may apply to the superior court for a writ of mandamus to compel the secretary of state to file the petition[s].”⁴

¶5 On April 6, 2011, the clerk’s office mailed a notice to Pinczewski-Fisher informing her that it was rejecting the referendum petitions. Pinczewski-Fisher filed her application in the trial court on April 18, 2011. The court determined Pinczewski-Fisher had not filed her application within the five-day timeline provided by § 19-122(A), and her application therefore was barred.

¶6 Pinczewski-Fisher asserts, without citation to authority, that her application was timely filed because “[i]t was never proven that the mail arrived before April 11” To the extent Pinczewski-Fisher argues the five-day period to apply for a writ of mandamus began on the date she received written notice of the clerk’s refusal, we previously have rejected this argument. *See Fisher v. City of Apache Junction*, 200 Ariz. 484, ¶ 4, 28 P.3d 946, 947 (App. 2001) (time period under § 19-122 begins when city

⁴Although § 19-122(A) refers to the secretary of state, its provisions also “apply to the legislation of cities” in which case “[t]he duties required of the secretary of state . . . shall be performed . . . by the city . . . clerk” A.R.S. § 19-141(A).

clerk refuses to file referendum petitions, not when written notice of refusal received). Because the city clerk rejected the petitions on April 6, the five-day period began on April 7. *See* A.R.S. § 1-243(A) (“[T]he time in which an act is required to be done shall be computed by excluding the first day.”). As the trial court correctly found, the application was therefore due, at the latest, by April 11. Pinczewski-Fisher did not apply for a writ of mandamus until April 18. Consequently, the trial court correctly determined the application was time-barred under § 19-122(A) and did not err in granting summary judgment. Because we conclude the grant of summary judgment was appropriate on this basis, we need not address Pinczewski-Fisher’s remaining arguments.

¶7 Citing *Jhagroo v. City of Phoenix*, 143 Ariz. 595, 598, 694 P.2d 1209, 1212 (App. 1984), the city requests an award of attorney fees based on Pinczewski-Fisher’s failure to cite to the record in her opening and reply briefs as required by Rule 13(a), Ariz. R. Civ. App. P. Because Pinczewski-Fisher’s briefs do not comply with the rule, in our discretion we grant the city reasonable attorney fees.⁵ *See* Ariz. R. Civ. App. P. 21(c); *Ariz. Dep’t of Revenue v. Gen. Motors Acceptance Corp.*, 188 Ariz. 441, 446, 937 P.2d 363, 368 (App. 1996) (“The determination to award or decline attorney’s fees is within this Court’s discretion.”).

⁵The city has filed a statement of attorney fees in an affidavit by counsel, which we construe to be the verified statement of costs and fees for the purposes of Rule 21, Ariz. R. Civ. App. P. Pinczewski-Fisher may file her objection pursuant to Rule 21(a) within five days of the date of this decision.

Disposition

¶8 The trial court's order granting summary judgment in favor of the city is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge